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United States Senate

COMMITTEE ON SMALL BUSINESS & ENTREPRENEURSHIP

WASHINGTON, DC 20510-6350

May 22, 2002

The Honorable Spencer Abraham
Secretary of Energy
1000 Independence Avenue SW
Washington, DC 20585

Dear Mr. Secretary:

Congratulations to the Department of Energy (DoE) on the progress it continues to make on small business programs. We understood that correcting the reporting of DoE's site and facility contracts would require a significant time lag to make corresponding improvements in small business prime contract awards.

These contracts, the Management & Operating (M & O), Management & Integration (M & I), and Environmental Restoration Management Contracts (ERMCs), account for the overwhelming majority of DoE's contracting dollars. Because these are five-year contracts, it will take time to review these contracts as they come up for renewal and to identify possible small business opportunities.

DoE's decision to award the M & O contract at Grand Junction, Colorado, as a small business set-aside is exactly the kind of action we hoped would take place. This contract, for \$128 million, is real money to small business. As long as DoE could report small business subcontracts as if they were prime contracts, DoE had no particular incentive to make these kinds of reviews and seek out small business opportunities. Now that DoE is required to report subcontracts as subcontracts, which we continue to believe is the accurate and statutorily proper approach, DoE is finding it has small business opportunities that were previously overlooked.

We realize this means DoE will continue to report relatively small achievements in the prime contract area, as these reviews take place. As long as DoE continues to make acceptable progress, in revisiting its site and facility contracts for possible small business set-asides, we are willing to place DoE's prime contracting number in its proper context--as a status report on an agency in transition to better small business participation.

We applaud DoE's work on the Grand Junction procurement and look forward to additional good news as this transition continues. We expect that DoE's understandable desire to increase its small business prime contract performance will continue to foster a careful review of new opportunities as they arise. On this question, however, we were gravely concerned to read,

in a March 6, 2002 letter to Ms. Luz Hopewell of the Small Business Administration, the following comment by Theresa Alvillar-Speake, Director of DoE's Office of Economic Impact and Diversity:

We remain very interested in remedying the present situation whereby DOE is being denied prime contracting credit for contract awards placed by our M&O contractors. We are requesting a meeting with the SBA Administrator, Mr. Hector Barreto, to discuss this situation.

We wish to be clear on this point. The current method of reporting subcontracts awarded by the site and facility contractors, as subcontracts rather than as prime contracts, is the correct method. Subcontracts are subcontracts. They are not prime contracts. This reporting requirement is not an adverse "situation" that needs "remedying." DoE is not being "denied" something to which it is entitled. Instead, DoE is expected to report subcontracts in the same manner as all other Executive agencies.

The Small Business Administration (SBA) has no authority to change the distinction between prime contracts and subcontracts. The current policy was set by the Office of Federal Procurement Policy, in its role to set governmentwide policy, under § 15(g)(2) of the Small Business Act. Reversal of that policy would require a ruling from OFPP, following an appeal from SBA or DoE, as provided for in that section.

To our knowledge, no outstanding issues remain unresolved to warrant such an appeal. On September 15, 1999, we wrote the Administrator of OFPP with our views on the former method of reporting these subcontracts, and to our knowledge none of the facts presented in that letter has materially changed. If either SBA or DoE expects to appeal the current reporting arrangement, we will insist upon a full explanation of what has changed materially. Without a change in those facts, neither SBA nor DoE has grounds to appeal this "situation" in pursuit of a "remedy."


We would appreciate a response from you by June 15, 2002, stating your commitment to comply with the directive of OFPP in reporting subcontract awards by the site and facility contractors. We would appreciate your views on the thoughts expressed by Ms. Alvillar-Speake in her letter to SBA. We would also welcome hearing from you on your commitment to continue reviewing site and facility contracts for small business set-aside opportunities. We believe DoE is on a positive course in this area and do not want to see DoE return to its previous flawed interpretation of the law.

Once again, congratulations on the success of the Grand Junction award. We look forward to additional good news as DoE pursues real improvement in small business opportunity, which will be reflected in stronger reported achievements in DoE's small business statistics.

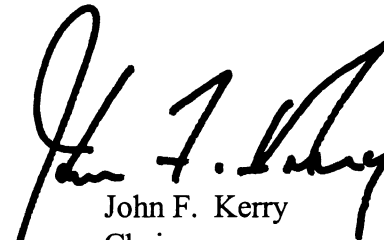
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If you have questions about this letter, please contact Cordell Smith for Senator Bond and John DaSilva for Senator Kerry. Both may be reached at the Committee on Small Business and Entrepreneurship, at (202)224- .

Sincerely,



Christopher S. Bond
Ranking Member



John F. Kerry
Chairman

cc: The Honorable Hector Barreto,
Small Business Administration